

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MARITZ HOLDINGS INC. and MARITZ	)	
MOTIVATION INC.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:21-cv-00438
v.	)	
	)	
DREW CARTER, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

COME NOW Defendants, Drew Carter (“Carter”), Chris Dornfeld (“Dornfeld”), Jesse Wolfersberger (“Wolfersberger”), Laurel Newman (“Newman”), Andrew Hrdlicka (“Hrdlicka”), Ben Valenti (“Valenti”), Daniel Conwell (“Conwell”) (collectively the “Individual Defendants”) and Whistle Systems, LLC (“Whistle”) (Whistle collectively with the Individual Defendants defined as “Defendants”), by and through their undersigned attorneys, and for their Motion to Dismiss the Complaint (the “Motion”) pursuant to Federal Rule of Civil Procedure 12(b)(6) state as follows:

1. Plaintiffs Maritz Holdings Inc. and Maritz Motivation Inc. (collectively “Maritz”) laid off or furloughed a large number of employees during the Summer of 2020, including the Individual Defendants in August of 2020. Once terminated and with no source of income or benefits, the Individual Defendants formed a company called Whistle. Now, more than seven months later, Maritz has concluded that it is inevitable that Whistle is or will compete with Maritz. Based on Maritz’s false assumptions and hunches, on April 15, 2021, Maritz filed their Complaint for Injunctive Relief and Damages against the Individual Defendants and Whistle seeking to prohibit the Individual Defendants from making a living.

2. Maritz's Count I for breach of restrictive covenant fails pursuant to Fed. R. Civ. P. 12(b)(6) because the Complaint and attachments thereto make it clear that those agreements lack consideration, are otherwise unreasonable and unenforceable on their face and Maritz has failed to allege a protectable business interest. Accordingly, Count I should be dismissed.

3. Maritz's Counts II & III for trade secret misappropriation based on the "inevitable disclosure" doctrine fails to state a claim because they are built upon a foundation that consists purely of conclusions and inferences. Maritz fails to sufficiently allege and describe the existence of trade secrets, fails to plead that the purported trade secrets at issue derive economic value and are not generally known, fails to sufficiently allege misappropriation by the Individual Defendants and fails to allege its purported "trade secrets" are related to interstate or foreign commerce. Accordingly, Counts II & III should be dismissed.

4. Maritz's Count IV for breach of the duty of loyalty against Carter, Dornfeld and Wolfersberger fails to set forth facts evidencing solicitation and, accordingly, should be dismissed.

5. Maritz's Count V for unjust enrichment fails because the Complaint lacks factual allegations of actual misappropriation for which monetary recover could be made and, accordingly, should be dismissed.

6. Maritz's Count VI fails to state a claim for tortious interference under Missouri law because the restrictive covenants lack consideration and are otherwise unenforceable on their face and void as a matter of law. Accordingly, Count VI should be dismissed.

7. Maritz's Count VII fails on its face because an injunction is a remedy and not a cause of action. Accordingly, Count VII should be dismissed.

8. In support of this Motion, pursuant to Local Rule 4.01, Defendants file their Memorandum of Law in Support and hereby incorporate it as if fully set forth herein.

WHEREFORE, for each of the reasons stated herein and in their Memorandum of Law in Support, Defendants, Drew Carter, Chris Dornfeld, Jesse Wolfersberger, Laurel Newman, Andrew Hrdlicka, Ben Valenti, Daniel Conwell and Whistle Systems, LLC, hereby request that the Court enter an Order dismissing the Complaint for failure to state a claim upon which relief can be granted, with prejudice, and providing them any such other and further relief as the Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED,

**DREW CARTER, CHRIS DORNFELD, JESSE WOLFERSBERGER, LAUREL NEWMAN, ANDREW HRDLICKA, BEN VALENTI, DANIEL CONWELL AND WHISTLE SYSTEMS, LLC**

/s/ Richard Z. Wolf

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was sent on this 7th day of May, 2021 electronically by ECF notification all attorneys of record.

/s/ Richard Z. Wolf